

Individual Practice Rules

Judge Denis R. Hurley

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Central Islip, New York 11722

For Scheduling Inquiries Contact: Trish Best, Courtroom Deputy

Telephone: (631) 712-5652

For All Other Inquiries (but see Rule 1B infra): (631) 712-5650

These rules will become effective on August 30, 2004.

Motions are returnable on the date of filing. Unless otherwise ordered by the Court in a specific case, litigation before this court shall conform to the following rules and practices:

1. Communications with Chambers

- A. **Letters.** Except as provided below, or otherwise provided by the Court in the context of an individual matter, all communications with the Court shall be via letter. In accordance with Federal Rule of Civil Procedure 5(a), all such letters shall also be served upon all other parties. However, copies of correspondence conducted between the parties should not be sent to the Court. Cf. Rule 4 (describing the required format for all submissions to the Court).
- B. **Telephone Calls.** All scheduling and calendar inquiries should be directed to the Courtroom Deputy, Ms. Trish Best. However, no extensions or adjournments will be granted over the phone. See Rule 1F infra. All such requests must be made via letter, with appropriate notice given to all parties. All other inquiries may be directed to the chambers number. However, no parties should call chambers absent extraordinary circumstances.
- C. **Faxes.** Faxes to chambers are not permitted without permission. Permission may be sought either via letter or via a phone call to chambers. Permission will only be granted in extraordinary circumstances. If permission is not granted, the communication must be accomplished through a letter sent through the usual means.
- D. **Internet.** Other than electronic filing, see Rule 5 infra, no communication with the Court may take place through any aspect of the internet.

- E. **Docketing, Scheduling and Calendar Matters.** All such matters should be discussed with the Courtroom Deputy, Trish Best, at the number listed above.
- F. **Requests for Adjournment or Extensions of Time.** No adjournments or extensions of time will be granted over the phone. Instead a written request must be mailed or faxed, see Rule 1C supra, to chambers requesting such an adjournment or extension. Please note that, prior to all requests for adjournments or extensions, the party must contact their adversary to determine whether they assent to such an adjournment or extension. The written requests must contain the following information:
- i. The originally scheduled date,
 - ii. The number of previous requests for adjournment or extensions by all parties in the action,
 - iii. Whether these previous requests, if any, were granted or denied and
 - iv. Whether the adversary consents and, if not, the reason they provided for declining to assent.
- G. **Extensions and Adjournments for Motion Briefing Schedules.** Extensions to motion briefing schedules will not be granted absent extraordinary circumstances. If an extension or adjournment relating to a motion briefing schedule is granted, the movant must serve and file a new notice of motion that expressly overrides any earlier notice of motion and contains a new date consistent with the extension. For example, if Defendant serves a motion upon Plaintiff and Plaintiff subsequently requests and receives an two week extension of time to serve her opposition, Defendant must then serve a new notice of motion with a new date of service. In accordance with the Court's "bundle rule" this new notice of motion will be filed at the conclusion of the briefing schedule. See Rule 2G.

2. **Motions**

- A. **Leave to File a Motion.** Unless otherwise noted, no party may file any motion unless leave to file such a motion has been granted. Leave to file a motion will not be granted until after a pre-motion conference letter has been submitted. Motions filed without first obtaining leave will be returned to the sender undocketed and unfiled. The following types of motions may be filed without leave:
- i. Motions for admission pro hac vice,
 - ii. Habeas motions by incarcerated petitioners,

- iii. Motions to proceed in forma pauperis,
- iv. Orders to show cause,
- v. Motions for reconsideration or reargument in accordance with Rule 6.3 of the Local Civil Rules for the Eastern District of New York,
- vi. All motions outlined in Federal Rule of Civil Procedure 6(b) and
- vii. Motions in accordance with Federal Rule of Appellate Procedure 4(a)(5).

- B. **Pre-Motion Conference Letter.** Unless otherwise noted supra, prior to making any motion, the proposed movant must submit a letter to the Court requesting a pre-motion conference. The party opposing the motion must file a letter in response to the pre-motion conference letter within ten days of service. No reply letter from the movant is necessary. Both the initial request and the opposition must conform to the following requirements:
- i. All pre-motion conference and opposition letters must give the basis for their position and cite supporting authority with pinpoint precision,
 - ii. All pre-motion conference and opposition letters must be no longer than three pages in length,
 - iii. All pre-motion conference letters must conform to the format set forth in Rule 4 infra and
 - iv. All pre-motion conference and opposition letters must indicate whether a telephonic or in-person conference would be preferable.
- C. **Effect of a Pre-Motion Conference Letter.** Service of a pre-motion conference letter within the time provided by Federal Rule of Civil Procedure 12(a) will constitute timely service of a motion made pursuant to Federal Rule of Civil Procedure 12(b). But see Fed. R. Civ. P. 6(b) (listing motions for which the Court may not enlarge the time of service).
- D. **Pre-Motion Conferences and Scheduling Orders.** Upon receipt of the pre-motion conference and opposition letters, the Court will either contact the parties to set a date for the pre-motion conference or waive the pre-motion conference and set a briefing schedule. In either case, if appropriate, the Court will then issue an order setting forth the schedule for the briefing of the motion and a filing date at the close of the schedule. See Rule 2G infra. All requests for adjournment or extension of the briefing schedule must conform with Rules 1F and 1G supra.
- E. **Form of the Motion.** There shall be a notice of motion, a separate initial memorandum and whatever supporting documentation that is appropriate.

There shall then be an opposition memorandum and whatever supporting documentation is appropriate. No matter how many cross-motions are filed, the party opposing the motion or motions shall always provide either a consent to the relief requested or a substantive opposition to each motion. For example, in a social security action, the parties may not merely rely upon their cross-motions for judgment on the pleadings. They must each file an opposition memorandum substantively addressing the arguments raised in their adversary's motion. The filing of a reply memorandum for each motion is advised but not required.

- F. **Memoranda.** Unless permission is sought and granted, the Court will not accept initial motion and opposition memoranda that are more than twenty pages long. Similarly, unless permission is sought and granted, the Court will not accept reply memoranda that are more than ten pages long. In all other respects, all memoranda must conform with requirements set forth in Rule 4 infra.
- G. **Bundle Rule.** The Court will not accept motion papers submitted in a piecemeal manner. Instead, the moving party must file all motion papers together, along with a complete set of courtesy copies for the Court (a complete set of courtesy copies includes both the moving and non-moving party's papers), on the filing date provided in the scheduling order. Motion papers submitted prior to the relevant filing date will be returned to the sender undocketed and unfiled. If electronic filing is utilized, all of the documents shall be electronically filed on the filing date and hard courtesy copies shall be filed with the Court on that same day.
- H. **Courtesy Copies.** A complete set of courtesy copies of all motion papers shall be provided to the Court on the filing date. The Court will not consider a submitted motion until courtesy copies are provided. This rule controls even when the parties utilize electronic filing. See Rule 5 infra.
- I. **Oral Argument.** The parties may request oral argument in connection with any motion. Such a request must be made in writing and should be reflected on the individual memoranda. The Court will contact the parties if it elects to hold oral argument on any motion. However, the parties should not depend upon oral argument in order to present further evidence. Instead, the parties must submit all of their evidence in connection with the written motion.
- J. **Pinpoint Citations.** In any motion made to the Court, whether before,

during or after trial, the parties must provide pinpoint citations for all cited authorities. Therefore, for example, a case citation in a Rule 12(b)(6) motion or a citation to the record in a Rule 50(b) motion must indicate the specific page that is being referenced. Submissions that do not contain pinpoint citations will be returned undocketed and unfiled.

3. **Magistrate Appeals and Objections to Magistrate Reports and Recommendations**

- A. **Timing.** In accordance with Federal Rule of Civil Procedure 72, all appeals and objections must be served upon all parties and filed with the Court within ten days of service of the challenged order or report. The party or parties opposing the appeal or objections will file their opposition within ten days of service. A reply may be filed within five days of service of the opposition.
- B. **Content.** All appeals and objections must set forth in detail those specific aspects of the order or report that are being challenged. The appeal or objection must also provide a copy of the actual order or report being challenged. The Court will not consider appeals or objections where a copy of the actual order or report being challenged is not provided.
- C. **Format.** Unless permission is sought and granted, the Court will not accept memoranda that are more than twenty pages long. In all other respects, all memoranda must conform with requirements set forth in Rule 4 infra.
- J. **Pinpoint Citations.** In any motion made to the Court, whether before, during or after trial, the parties must provide pinpoint citations for all cited authorities. Therefore, for example, a case citation in a Rule 12(b)(6) motion or a citation to the record in a Rule 50(b) motion must indicate the specific page that is being referenced. Submissions that do not contain pinpoint citations will be returned undocketed and unfiled.

4. **Format for all Submissions to the Court**

- A. **Reproduction.** A motion, opposition, reply or letter may be reproduced by any process that yields a clear black image on light paper. The paper must be opaque and unglazed. Only one side of the paper may be used.
- B. **Cover.** For motions, a cover is not required but there must be a caption that includes the case number, the name of the court, the title of the case, and a

brief descriptive title indicating the purpose of the motion and identifying the party or parties for whom it is filed.

- C. **Binding.** All submitted documents must be bound in any manner that is secure, does not obscure the text, and permits the document to lie reasonably flat when open.
- D. **Paper size, line spacing, color and margins.** All submitted documents must be on 8½ by 11 inch paper. For papers filed in connection with a motion, all text must be double-spaced. However, quotations more than two lines long may be indented and single-spaced. Moreover, for papers filed in connection with a motion, headings and footnotes may be single-spaced. For all letters, the text may be single-spaced. For the body of all submissions, only white or grey paper may be used. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.
- E. **Page numbering.** Except for the first page, all pages must be numbered in a clear and consistent manner.
- F. **Typeface.** Either a proportionally spaced or a monospaced typeface may be used. A proportionally spaced typeface must include serifs. A proportionally spaced typeface must be 13-point or larger. A monospaced face may not contain more than 10½ characters per inch.
- G. **Typestyle (Font).** The typestyle must be a plain, roman style, although italics or boldface may be used for emphasis. Therefore, submissions that are largely or completely written in bold or in capital letters are not acceptable. Case names must be either italicized or underlined.
- H. **Footnotes.** Although they may be single-spaced, footnotes must otherwise be the same font, typeface and typestyle as the rest of the document. Footnotes must also utilize the same one inch margins as the balance of the document.

5. **Electronic Case Filing (ECF)**

- A. **Electronic case filing, as of August 2, 2004, is mandatory.** Applications to be excused from this requirement must be made to the assigned magistrate judge. More information on the ECF process may be found at “http://www.nyed.uscourts.gov/CM_ECF/cm_ecf.html.”

- B. **Hard Courtesy Copies.** Hard courtesy copies of all papers filed electronically, including motions, letters and stipulations, must be provided to Chambers. All such papers must be clearly marked “courtesy copy,” and must clearly indicate that the original was filed via ECF. The Court will not consider a document which has been filed electronically until a hard courtesy copy is received in chambers.
- C. **Large or Non-Text Exhibits.** Parties filing voluminous or non-text exhibits shall only file hard copies of those exhibits.
- D. **Service.** Electronic filing does not excuse the parties from their obligation to serve all communications with the Court upon all parties to the action. See, e.g., Fed. R. Civ. P. 5(a); Rule 1A supra.

6. **Pre-Trial Procedures**

- A. **Joint Pre-Trial Orders in Civil Cases.** Unless otherwise ordered by the presiding United States Magistrate Judge, within sixty days from the date that discovery is certified as being completed in a civil case, the parties must submit to the Court a joint pre-trial order. This joint pre-trial order shall contain:
 - i. The full caption of the action;
 - ii. The individual names, firm names, business addresses, telephone and fax numbers for all trial counsel;
 - iii. A brief statement by each party regarding the basis for or absence of subject matter jurisdiction. These statements shall contain citations to authority and a recitation of the pivotal facts;
 - iv. A summary of the case’s procedural history, including the content and disposition of any pre-trial motions;
 - v. A listing of all remaining claims and defenses. This listing should include a brief summary of each claim or defense along with citation to the authority relied upon for those remaining claims and defenses;
 - vi. A statement by each party as to whether jury trial is sought;
 - vii. A statement indicating whether the parties have all consented to trial before the presiding United States Magistrate Judge;
 - viii. All stipulations of law and/or facts that are agreed upon by the parties;
 - ix. A list by each party of all fact and expert witnesses whose testimony is to be offered at trial. Only witnesses listed in the join pre-trial order will be permitted to testify at trial;
 - x. A list identifying all deposition testimony that will be offered in the

- case;
- xi. A list identifying all exhibits that will be presented in the case. A notation should be made next to each listed item of whether there is an objection to that particular exhibit and, if so, a brief statement of the basis for the objection along with supporting authority.

B. Filings Prior to Trial in Civil Cases

- i. All in limine motions must be fully briefed and filed no later than the one week prior to trial. No extensions will be granted absent extraordinary circumstances. Detailed briefing schedules will be set at the final pre-trial conference;
- ii. The parties must file two copies of their proposed voir dire and requests to charge no later than one week prior to trial. Requests to charge must be submitted in complete sentence form as to any claim, affirmative defense, or other issue specific to the case. It is unnecessary to submit requests for general charges (i.e. witness credibility, role of the jury). Form charges are permissible provided they are written out completely and include full citations to their source. Any discs submitted with these documents must be generated in WordPerfect version 8.0 or higher. Electronic documents prepared with any different wordprocessing program are not acceptable;
- iii. All plaintiffs and counter-plaintiffs must file a detailed statement with regard to damages and other relief sought for each individual claim no later than one week prior to trial;
- iv. Each party must file a pre-trial memorandum no later than one week before trial;
- v. In non-jury cases, each party must file a statement, no later than one week prior to the trial, indicating the elements of each claim or defense asserted as well as a summary of facts that will arguably establish each relevant element.

C. Pre-Trial/Trial Rules

- i. **Exhibits.** All exhibits must be exchanged prior to jury selection. If a physical exchange of the documents has not been accomplished prior to jury selection, the exhibit may not be offered at trial. If an exhibit cannot be turned over for some reason, the party endeavoring to offer this exhibit into evidence must serve and file a letter explaining the reasons for this failure. Additionally, the parties must provide a courtesy copy of all exhibits to the Court on the day of jury selection.
- ii. **Witnesses.** Witnesses that were not identified in the joint pre-trial

order may not be called at trial. If a witness was unavailable or unidentified at the time that the joint pre-trial order was prepared, the party proposing to offer this unidentified witness shall serve and file a letter as soon as is possible identifying the witness and explaining the reasons for nondisclosure.

- iii. **Exhibits.** As much as possible, the parties shall mark all exhibits as evidence and shall identify for the Court those exhibits that will be offered as evidence. In marking the exhibits, plaintiff's exhibits shall be indicated by numbers while defendant's exhibits shall be indicated by letters. Unless the Court first grants permission to do otherwise, exhibits may not be published to the jury until deliberation begins.
- iv. **Experts' Reports.** All experts' reports must be turned over to the opposite parties prior to jury selection in accordance with the schedule as established by the Magistrate Judge. If the reports are not turned over in a timely manner, the expert may not be called.
- v. **Depositions.** If you intend to read the depositions of a party or witness at trial, you must advise your adversary, prior to jury selection, of those selections that you intend to introduce. If notice is not given in a timely manner and with adequate particularity, you may not read those depositions into evidence at trial. If opposing counsel believes that he or she has a right to read other portions of the relevant deposition transcript, he or she shall indicate in writing, as soon as is practicable after receipt of the designation, the bases for that belief and also provide pinpoint cross-designations to the relevant deposition transcript.
- vi. **Full Work Days.** For every scheduled day of the trial, except for the day of jury selection, the Court expects to work from 9:30 a.m. until 5:30 p.m. Lunch usually occurs between 12:30 p.m. and 1:30 p.m. The parties must be prepared to present openings, witnesses and summations for every scheduled minute until the case is presented to the jury.
- vii. **Promptness.** The Court expects the parties to be prepared to start promptly at the beginning of each session. If something unforeseen has delayed a party or counsel, call the Courtroom Deputy, Ms. Trish Best, as soon as possible to advise of the delay.

7. **These Individual Practice Rules Shall Not Curtail or Otherwise Limit Judge Hurley's Discretion Over All Matters Relating To His Cases. Nor Shall These Rules Be Interpreted to Curtail or Otherwise Limit the Discretion of the Magistrate Judges Assigned to a Particular Case.**

